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09/775,585	02/05/2001	E. Stephen Crandall	1999-0735-CIP	9273

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EXAMINER	
SHINGLES, KRISTIE D	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/775,585	CRANDALL, E. STEPHEN	
	Examiner	Art Unit	
	KRISTIE D. SHINGLES	2448	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *03 November 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *39-54* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *39-54* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *11/18/10*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendments

Claims 39, 46, 53 and 54 have been amended.
Claims 1-38 have been cancelled.

Claims 39-54 are pending.

Response to Arguments

I. Applicant's arguments with respect to claims 39 and 46 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

II. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

III. Claims 39 – 54 are rejected under 35 U.S.C. 103(a) as being unpatentable over Picco et al (US 6,029,045) in view of Andros et al (US 5,045,850) in further view of Jones (US 6,055,246).

a. **Per claims 39 and 46** (differ only by statutory class), Picco et al teach the method for receiving video performance content over a network for generating a pseudo-live performance, the method comprising:

- detecting a need for the video performance content by determining whether stored video performance content is out-of-date, wherein the stored video performance content is determined to be out-of-date based on a video performance content class of the stored video performance content (col.6 line 57-col.7 line 2);

- selecting a process for obtaining the video performance content from at least one of a plurality of performance transmitters (col.2 lines 49-58, col.4 line 66-col.5 line 22, col.14 lines 58-67);

- executing via a processor the process for obtaining the video performance content from the at least one of the plurality of performance transmitters (col.5 lines 2-54, col.6 lines 1-24); and

- generating the pseudo-live performance by mixing content corresponding to a portion of the video performance content with other content, wherein, determining whether stored video performance content is out-of-date further comprises: (col.5 lines 55-65) and

- determining whether the time-stamp of the stored video performance content matches the time of the latest update of the stored video performance content (col.6 line 61-col.7 line 12).

Yet Picco et al fail to explicitly teach wherein the stored video performance content is determined to be out-of-date based on a performance content class of the stored performance content; obtaining the needed performance content from at least one of a plurality of performance transmitters based on a range of global positioning system (GPS) coordinates that can receive a broadcasting signal from the at least one of the plurality of performance transmitters; and determining whether stored video performance content is out-of-date further comprises: transmitting a query to determine a time of a latest update of the stored video performance content, receiving the time of the latest update of the stored video performance

content in response to the transmitting of the query, accessing a time-stamp of the stored video performance content; and the time-stamp associated with a time the stored video performance content was stored. However Andros et al teach that a user in a network may elect to receive updates for different types of content (sports, weather, stocks) at different times, wherein the content is updated at different frequencies according to it's type and source (col.12 line 64-col.13 line 22). Furthermore, Jones teaches receiving geographic coordinates from a satellite GPS receiver based on a range of coordinates for location parameters for broadcasting the media content to the user devices and determining the latest update of the content from a time-stamps of the stored video content, wherein the time-stamp associated with a time the stored video performance content was stored (Abstract, col.1 line 24-col.2 line 56, col.3 lines 31-57, col.4 lines 1-45).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of Picco et al with Andros et al and Jones for the purpose of determining that stored data is old or out-of-date by comparing latest update time values and updating different types of content at different rate. Maintaining the date and time of content modifications are common techniques used in the art for effectively implementing updates, synchronizing data, time-stamping and keeping track of the current version of stored content in order to keep the stored content up-to-date. It is obvious that different types of network content have different storage time-stamps, expiration times and therefore require more or less frequent update checking depending on the type of content and when the content was received. Furthermore it would have been obvious to use a GPS in the system that identifies the

location with a range of coordinates of a user in order for the system to provide content to the user that is related to and associated with the user's global location.

b. **Per claim 40**, Picco et al with Andros et al and Jones teach the method of claim 39, Picco et al further teach the method further comprising: accessing a profile wherein the profile indicates one or more of: a type of content desired by an end-user; a schedule of an end-user; and scheduled times at which content is transmitted by the at least one of the plurality of performance transmitters (col.3 lines 1-13 and 30-37, col.6 lines 23-41, col.13 line 40-col.14 line 12).

c. **Claim 47** is substantially similar to claim 40 and is therefore rejected under the same basis.

d. **Per claim 41**, Picco et al with Andros et al and Jones teach the method of claim 39, Picco et al further teach the method further comprising determining whether a performance transmitter is capable of receiving and responding to a content request, wherein the determining further comprises at least one of: transmitting a query signal to the at least one of the plurality of performance transmitters; passively receiving a signal from the at least one of the plurality of performance transmitters; and accessing a profile (col.7 line 55-col.8 line 6, col.10 lines 52-62).

e. **Claim 48** is substantially similar to claim 41 and is therefore rejected under the same basis.

f. **Per claim 42**, Picco et al with Andros et al and Jones teach the method of claim 39, Picco et al further teach the method further comprising: generating a content request; and transmitting the content request to the at least one of the plurality of performance transmitters via the network (col.8 lines 19-55).

g. **Claim 49** is substantially similar to claim 42 and is therefore rejected under the same basis.

h. **Per claim 43**, Picco et al with Andros et al and Jones teach the method of claim 39, Picco et al further teach wherein the selecting the process comprises determining an appropriate time to receive information from a performance transmitter (col.7 lines 9-54, col.9 lines 10-39).

i. **Claim 50** is substantially similar to claim 43 and is therefore rejected under the same basis.

j. **Per claim 44**, Picco et al with Andros et al and Jones teach the method of claim 39, Picco et al further teach wherein generating the pseudo-live performance comprises: retrieving the other content; decoding at least one command of the other content; and performing at least one tasks instructed by the commands (col.8 lines 7-22, col.9 line 61-col.11 line 17).

k. **Claim 51** is substantially similar to claim 44 and is therefore rejected under the same basis.

l. **Per claim 45**, Picco et al with Andros et al and Jones teach the method of claim 44, Picco et al further teach wherein the at least one command includes at least one of: a programming command that executes a software program, a housekeeping command that performs at least one of loading, deleting, changing and overlaying stored content, and a performance command that reproduces stored content from a specified location of a storage device (col.7 line 33-col.8 line 22; Jones— col.3 lines 31-57, col.4 lines 1-45).

m. **Claim 52** is substantially similar to claim 44 and is therefore rejected under the same basis.

n. **Per claim 53,** Picco et al with Andros et al and Jones teach the method of claim 39, Picco et al further teach wherein the video performance content includes multimedia performance content (col.5 lines 61-63, col.11 lines 44-67; Jones—col.6 line 13-col.7 line 35).

o. **Claim 54** is substantially similar to claim 53 and is therefore rejected under the same basis.

Conclusion

IV. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KRISTIE D. SHINGLES whose telephone number is (571)272-3888. The examiner can normally be reached on Monday-Friday 9:00am-6:30pm.

V. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Firmin Backer can be reached on 571-272-6703. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kristie D. Shingles/
Primary Examiner, Art Unit 2448